BRIEF IN SUPPORT OF PETITION FOR WRIT OF *CERTIORARI.*

To avoid duplication, this brief is limited to argument only, since the formal statement required by the rules appears *ante* as a part of the petition and argument.

I.

The decision below is contrary to the applicable statutes as construed by this court.

Under the decision of the Supreme Court in *Kirchbaum* v. *Walling,* 316 U. S. 517, elevator operators in a building whose tenants are engaged in the production of goods for commerce perform services so closely related to these activities as to bring them within the coverage of the act. Under the facts in the instant case, a substantial portion of the Bank's building was occupied by tenants who were engaged in the production of goods for commerce and therefore the elevator operators are entitled to the benfits of the Fair Labor Standards Act. The petitioners bear the same relationship to the interstate commerce conducted in respondent's building that the elevator operators bore to the production for commerce in the *Kirchbaum* and *Arsenal* cases.

Reason, as well as the policy and purpose of the statute dictate that in the application of the act, no distinction should be made between employees performing custodial or maintenance services for tenants producing goods for commerce and employees rendering identical services for concerns engaged in interstate mining operations, interstate transportation and communication. If the former are engaged in the "production of goods for commerce," the lat-

ter by parity of reasoning are engaged "in commerce." The duties performed, the wages paid, the hours worked and the conditions under which the work is done are generally the same in both of these cases. It is apparent that any construction of the act which seeks the creation of one set of labor standards for employees necessary to production, while countenancing the legality of substantially lower labor standards for employees necessary to commerce is violative of the economic principles underlying the act and the declared policy of Congress.

Your Honors held in *Warren-Bradshaw Drilling Co.* v. *Hall*, 317 U. S. 88, 87 L. ed. 99, that the business of drilling oil wells (a mining operation) bore such a "close and immediate tie" to the production of oil which might move in interstate commerce, that the employees of such drilling company came within the purview of the act.

The petitioners in this case furnished the services which kept the building clean and habitable for, and useful by, the executive officials and their employees, who operated the mines, rock products company and railroad and made it possible for customers to call at the tenant's place of business for the purpose of transacting interstate commerce business.

Your Honors have rejected a narrow construction of that which constitutes interstate commerce under the act in *Walling* v. *Jacksonville Paper Company*, 317 U. S. 564, 87 L. ed. 393, in which Mr. Justice Douglas, speaking for the Court, quoted, with approval, the statement of Senator Borah, speaking for the Senate Conference Committee in the Conference Report that "Any of the employees who are a necessary part of carrying on that business (which occupies the channels of interstate commerce) are within the terms of this bill."

II.

The respondent takes the position that the *Kirchbaum* and *Arsenal Building* cases do not control for the reason that in those cases, the building service employees were engaged in servicing the building, the space of which was principally occupied by concerns which actually were engaged in the manufacture of goods, wares and merchandise within the building, whereas in the instant case, a majority of the space occupied by the tenants of the building are engaged in interstate commerce and the production of goods for commerce, although the actual mining operations, and railroad operations are not carried on within the confines of the building.

The Circuit Court of Appeals has apparently decided to adopt the views of the respondent, and is an important question of Federal law, which, if the theory of the respondent is correct, has not yet been settled by this Court.

It is therefore respectfully submitted that the petition should be granted.

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MOTION FOR PERMISSION TO PROCEED *IN FORMA PAUPERIS* AND ON A TYPEWRITTEN RECORD.

Your petitioners would show this Honorable Court that on the 20th day of December, 1943, the Circuit Court of Appeals for the Tenth Circuit, upon a proper showing, permitted the case to be transcribed and the petitioners to proceed upon a typewritten transcript of the record and in *forma pauperis* (Rec. 93-94).

Wherefore, your petitioners pray for an order of this Court allowing them to prosecute their writ *in forma pauperis* and that the clerk docket the certified transcript of the record and that the rule requiring a deposit to cover costs be waived and that petitioners be allowed to proceed on a typewritten record.

For all of which your petitioners will ever pray.

RUBY LEE RUCKER, MARGIE VAN SICKLE, BOBBIE HOFFMAN, GWENDOLYN SMITH, PAULINE BUTLER, and BETHYL BRANDON ROBERTS, *Petitioners,*

By: HAROLD E. RORSCHACH,
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